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C O N F I D E N T I A L SECTION 01 OF 02 ASTANA 000090

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DEPT FOR EB/ESC; SCA/CEN (O'MARA)

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TAGS: [ENRG](#) [EPET](#) [KZ](#) [CA](#)

SUBJECT: KAZAKHSTAN: CANADIAN OIL COMPANY WEATHERS LEGAL  
ASSAULT

REF: A. ALMATY 603

[1](#)B. 05 ALMATY 3857

[1](#)C. ALMATY 2301

Classified By: Charge d'Affaires Kevin Milas; Reasons 1.5(b) and (d).

[1](#)1. (C) Summary: The Canada-based "NationsEnergy" oil company, whose Kazakhstani subsidiary, "Karazhambasmunai JV" (KBM), owns a 50,000 barrel per day oil field, recently won an appeal in Kazakhstani court against an individual claiming nearly 50% of KBM by virtue of a dispute with former NationsEnergy shareholders. Nations Energy Vice President Patrick O'Mara recently told Econoff that he believes the claimant, Zoran Savicic, is cooperating with well-placed Kazakhstanis in a plot to either win 50% of KBM in court, or, failing that, to drive down NationsEnergy's price before an acquisition bid. With a rumored asking price of \$2 billion, NationsEnergy is entertaining numerous potential buyers, both Kazakhstani and international. End Summary.

#### Anatomy of the Legal Assault

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[1](#)2. (C) NationsEnergy won an August 19 decision in Mangistau Oblast Appeals Court which reversed an April ruling, by a Specialized Economic Court, granting Zoran Savicic, a Serbian citizen, 17.9% of KBM. Savicic's claim arose out of a 1994 agreement with individuals who later became NationsEnergy shareholders. Savicic's claim appears to have survived to date against long odds. Court documents suggest that, not only does Savicic appear not to have fulfilled his side of the 1994 agreement, but he also managed to void a 1998 settlement agreement by arguing that he had been coerced into signing. In 2006, Savicic managed to secure a default judgment against the defendants in Nevada court, allegedly by providing process servers with an incorrect address for the principal defendant. Rather than seek collection of the judgment in U.S. courts, however, Savicic chose to transfer the case to Kazakhstan (convincing a Kazakhstani judge to accept jurisdiction by switching his target from the Nevada-registered NationsEnergy to KBM) -- where, NationsEnergy lawyers maintain, he helped secure the favorable April verdict by misrepresenting the significance of the Nevada court's judgment, even after being enjoined from doing so. Savicic's legal victories, however, came to a halt in August in the Mangistau Court of Appeals.

#### Accusations of Kazakhstani Insider Involvement

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[1](#)3. (C) On September 16, O'Mara told Econoff that he is

convinced that a group of well-placed Kazakhstani insiders, including Timur Kulibayev (the president's son-in-law), Askar Balzhanov (General Director of "KazMunaiGaz (KMG) Exploration and Production", Zhakyp Marabayev (Managing Director of KMG), and Adilbek Dzhaksybekov (Head of the Presidential Administration), were behind Savicic's assault on KBM in Kazakhstani courts. O'Mara suspects that the idea to transfer the case to Kazakhstani courts took form in 2004, when rumors began to break that NationsEnergy was available for sale (ref A). O'Mara surmises that the aim of the plot was first and foremost to win 50% of KBM with the help of corrupt judges and, failing that, to drive down NationsEnergy's asking price for a potential acquisition bid.

#### CNPC Refuses to Cooperate with Plot

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14. (C) O'Mara told Econoff that, in November 2005, in the midst of NationsEnergy's negotiations to sell the company to the Chinese National Petroleum Company (CNPC), CNPC officials forwarded him text messages from Marabayev and Balzhanov aimed at convincing the Chinese to hold-off buying NationsEnergy (for a reported \$2 billion), in order to give Kulibayev's group time to "knock \$700-\$800" off the price "with fines and legal actions." The Kazakhstanis would then buy NationsEnergy and re-sell at least part of the company to the Chinese. O'Mara also claimed that Kulibayev has a history of dealing with Savicic (whom, he says, was a subject of interest in the Serbian War Crimes Tribunals), having partnered with the Serbian to profit from illegal sales of oil under embargo of Saddam Hussein's regime.

#### Ace in the Hole: Threatening to Go Public

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15. (C) O'Mara credits NationsEnergy's success in the appeals court both to the overwhelming weight of legal evidence in the company's favor and to his own efforts to tacitly warn the Kazakhstani insiders that he was aware of their actions and would denounce them publicly if faced with losing a large share of the company. (The case has thus far not entered the Kazakhstani media. The threat of publicity, O'Mara believes, is what will keep Savicic from appealing the August court decision, though he has a year in which to do so.) O'Mara told Econoff that he had communicated most of his suspicions and warnings to Deputy Prime Minister Masimov -- who, O'Mara recounted, eventually confirmed O'Mara's claims of insider involvement (without naming names), and then professed to have put an end to the plot. Smiling, O'Mara told Econoff that, in what he termed "Kulibayev's revenge," the financial police had raided NationsEnergy's offices on September 11, and the Subsoil User's Inspection Office had come calling two days later.

#### Suitors Still Flocking to Buy NationsEnergy

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16. (C) Meanwhile, O'Mara said, potential buyers continued to court NationsEnergy. Since November, he said, several groups had shown up unannounced at NationsEnergy's Almaty offices, some to bluff, others to threaten, and a few to make legitimate offers. While the Chinese continued to make the best offer, O'Mara said, he had the increasing feeling that the GOK would prefer a different buyer. Masimov, he said, was trying to set up a sale to Vladimir Kim of Kazakhmys (a London-based copper mining company) -- but so far the offer was too low. BankTuranAlem had made the best offer among Kazakhstani buyers, O'Mara noted, while Occidental Petroleum (a U.S. company) appeared to be putting together an attractive offer in conjunction with a Dubai sheikh. Asked about news reports of an offer by India's ONGC-Mittal Energy Corporation, O'Mara waved it off, telling Econoff that, while Kulibayev was pushing a deal with the Mittal group, ONGC "had

not given the slightest indication that they knew how to do business."

¶7. (C) Comment: O'Mara's thesis -- that predatory buyers are using Kazakhstan's legal system to drive down the purchase price of an attractive oil and gas asset -- is a familiar one. (See Ref B on PetroKazakhstan, and Ref C on Parker Drilling, for recent cases which share this element in common with the NationsEnergy case.) Although NationsEnergy has managed so far to keep its legal problems out of the press, it will be interesting to see if the company can succeed in finalizing its sale prior to the expiration of Savicic's year-long appeal period. While we cannot vouch for the veracity of O'Mara's accusations -- and suspect that he would be hard-pressed to offer any proof of his allegations -- we view him as a generally credible individual. End Comment.  
MILAS